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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/600,806

06/19/2003

Thomas R. Herren

10001-001

6812

7590

06/14/2006

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EXAMINER

A, PHI DIEU TRAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,806

Applicant(s)

HERREN, THOMAS R.

Examiner

Phi D. A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 3-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/19/03</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Claims 3-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species and inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/16/06.
2. Applicant's election with traverse of claims 1-2 to figures 1-2 in the reply filed on 2/16/06 is acknowledged. The traversal is on the ground(s) that the restriction is improper as the restriction is based on figures instead of claims. This is not found persuasive because as set forth in the restriction, the election of any specie is to be accompanied by applicant pointing to the claims associated thereof. Effectively, applicant is telling the examiner that claims 1-2 in this case is to the distinct specie of figures 1-2. Although claims may be of a variable of scope, the claims nevertheless belong to a specie or other species as they are broad enough. If the claims are broad enough to include more than one specie, and are thus considered generic, applicant is welcome to point it out and have the claims examined also. Nevertheless, the claims cannot latter be changed to cover other species, non-elected only.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herren (6260318) in view of Hatzinikolas (5313752) and Tellenaar (6705056).

Herren (figure 5) shows a multi-purpose construction assembly comprising a plurality of parallel vertical stud members (50) of equal length possessing a first terminal end and a second terminal end, a means (10) for reinforcing the plurality of studs comprising a unitary elongated metal plate like member formed of a finite length defined by two parallel studs terminating in a first end and a second end (where 12 and 13 are located), the member possessing a first horizontal edge and a second horizontal edge between the first end and the second end, a first flange (16) extending perpendicularly upwards from the first end, the first end of the metal plate incorporates a pair of parallel notches (30) along the horizontal axis, the first and second horizontal edge of the plate are folded downward and perpendicular to the plate forming a first downward flange (21) and a second downward flange (22), the first flange being substantially longer than the second flange and the width of the first flange extends to and overlaps the adjacent parallel upright studs which define the width of the member located between each stud member.

Herren does not show a second flange extending perpendicularly upward from the second end to permit fastening to the adjacent stud, an anchor means attached to the second terminal end of the parallel stud member, a first horizontal expansion contraction means slideably attached to the first terminal end of the stud members, the anchor means being a second horizontal expansion contraction means slideably attached to the second terminal end of the parallel stud members.

Tellenaar shows a second flange (31a, right) extending perpendicularly upward from the second end to permit fastening to the adjacent stud.

Hatzinikolas discloses an anchor means(12) attached to the second terminal end of the parallel stud members, a first horizontal expansion contraction means(14) slideably attached to the first terminal end of the stud members, the anchor means being a second horizontal expansion contraction means slideably attached to the second terminal end of the parallel stud members.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Herren's structure to show a second flange extending perpendicularly upward from the second end to permit fastening to the adjacent stud as taught by Tellenaar, a first horizontal expansion contraction means slideably attached to the first terminal end of the stud members, the anchor means being a second horizontal expansion contraction means slideably attached to the second terminal end of the parallel stud members because having a second flange extending upwardly from the second end would allow for the easy attachment of the second end to a stud as taught by Tellenaar, and having first and second horizontal expansion contraction on the terminal ends of the studs would allow for the easy mounting of the studs which permits vertical movement as taught by Hatzinikolas.

Conclusion

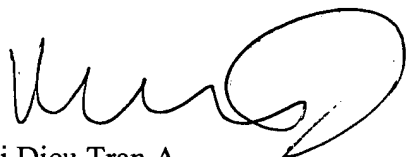
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different braces and frame designs.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Phi Dieu Tran A', with a large, stylized loop at the end.

Phi Dieu Tran A

6/11/06